Ref. No. 338

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

IN RE CHARGE OF JAIME GIRON	)	
	)	
UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324b Proceeding
	)	
v.	)	CASE NO. 90200307
	)	
HARRIS RANCH BEEF COMPANY,	)	
Respondent.	)	
	)	

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION AND GRANTING RESPONDENT'S MOTION TO AMEND

I. Procedural History

On April 24, 1991, Respondent filed its Answer to First Amended Complaint. In its Answer, Respondent generally denies the allegations of the Complaint and sets forth the following affirmative defenses: (1) Jaime Giron does not have standing under 8 U.S.C. § 1324b(a)(3)(B), because he did not timely file a valid application for naturalization; (2) Counts I and III are time-barred since they allege violations of Section 535 of the Immigration Act of 1990, which is not retroactive, rather than violations of pre-amendment 8 U.S.C. § 1324b; and (3) Since Complainant failed to properly educate employers concerning the requirements of complying with 8 U.S.C. § 1324(a)(1)(B) and gave employers' conflicting advice regarding their responsibilities under the statute, Counts I and III are barred by the doctrine of unclean hands.

Complainant filed its Motion for More Definite Statement and to Strike Affirmative Defenses on April 30, 1991. On May 21, 1991, I issued an Order denying Complainant's Motion for More Definite Statement of Respondent's First Affirmative Defense, granting Complainant's Motion to Strike Respondent's Second Affirmative Defense, and denying Complainant's Motion to Strike Respondent's Third Affirmative Defense.

On May 28, 1991, Respondent filed its Motion to Amend Answer to First Amended Complaint, seeking to add a Fourth Affirmative Defense of failure to state a claim upon which relief can be granted. Respondent also filed on May 28, 1991, its Motion for Reconsideration of Order Granting Complainant's Motion to Strike

Respondent's Second Affirmative Defense, on the grounds that the Administrative Law Judge "[failed] to distinguish between facts supporting evidence of a violation of 8 U.S.C. section 1324b prior to the enactment of Section 535 of the Immigration Act of 1990, and facts supporting an independent cause of action for violation of 8 U.S.C. section 1324b."

II. Findings of Fact and Conclusions of Law

A. Motion to Amend Answer to First Amended Complaint

Upon thoroughly reviewing Respondent's Motion to Amend and the attached amended pleading, I find good cause shown for granting Respondent's motion, pursuant to 28 C.F.R. § 68.8(e). The affirmative defense that Respondent seeks to add is supported by a statement of facts, in accordance with 28 C.F.R. § 68.8(c)(2), and the facts alleged are sufficient to constitute an affirmative defense. In addition, the alleged defense of failure to state a claim upon which relief can be granted is legally sufficient. Lastly, I am liberally construing Respondent's pleadings, as I have liberally construed Complainant's pleadings (see my Order Denying Complainant's Motion for Summary Decision and Respondent's Motion for Judgment on the Pleadings and/or Cross-Motion for Summary Adjudication of Issues, issued on May 31, 1991), so as to ensure Respondent's right to litigate all of its defenses to this action.

B. Motion for Reconsideration of Order Granting Complainant's Motion to Strike Respondent's Second Affirmative Defense

Upon thoroughly reviewing Respondent's Motion for Reconsideration, I do not find good cause showing to grant the motion. As previously indicated in both my Order Granting Complainant's Motion to Strike Respondent's Second Affirmative Defense and my Order denying motions for summary decision, Counts I and III, liberally construed, sufficiently allege violations of 8 U.S.C. § 1324b, prior to its amendment by Section 535 of the Immigration Act of 1990.[1] Under the rules of federal procedure, which 28 C.F.R. § 68.1 permits me to consider, the Complaint need not state with precision all elements that give rise to a legal basis for recovery as long as fair notice of the nature of the action is provided. See Wright and Miller, 5 Federal Practice and Procedure section 1216 (Rule 8) (1990); St. Louis Teacher's Union, Local 420 v. Board of Educ., 652 F. Supp. 425, 430 (D.C. Mo. 1987); and McClain v.

[1]In construing the allegations in Counts I and III, I took particular note of the fact that both counts incorporate the factual allegations set forth in paragraphs 1 - 15 of the First Amended Complaint.

Real Estate Bd. of New Orleans, Inc., 444 U.S. 232 (1980). In this case, it is my view that the Counts I and III of the First Amended Complaint, read in their entirety, give fair notice of the nature of the action. Therefore, I affirm my decision to strike Respondent's Second Affirmative Defense, which contends that Counts I and III actually allege violations of Section 535 of the Immigration Act of 1990, and deny Respondent's Motion for Reconsideration.

III. Ultimate Findings of Fact and Conclusions of Law

(1) Respondent's Motion to Amend Answer to First Amended Complaint is hereby GRANTED; and

(2) Respondent's Motion for Reconsideration of Order Granting Complainant's Motion to Strike Respondent's Second Affirmative Defense is hereby DENIED.

SO ORDERED, this 4th day of June, 1991, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge

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